

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

§

v.

§

CASE NO. 4:04CR106(18)

KAY LETHA SMITH

§

§

§

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on August 12, 2009 to determine whether the Defendant violated her supervised release. The Defendant was represented by Robert Arrambide. The Government was represented by Chip Roy.

On January 4, 2005, the Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to 120 months imprisonment, followed by a 5-year term of supervised release for the offense of conspiracy to possess with intent to distribute cocaine base. Defendant's supervision commenced on November 26, 2008.

On August 4, 2009, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (Dkt. 1417). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state or local crime; (2) Defendant shall not unlawfully possess a controlled substance; (3) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court; and (4) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled

substances, except as prescribed by a physician.

The petition alleges that Defendant committed the following violations: (1) on April 27, 2009, Defendant was arrested for Assault Causes Bodily Injury Family Violence, a class A misdemeanor, in Paris, Texas, arising out of an altercation with her daughter and the charge is currently pending; (2) the U.S. Probation Office received an incident report from Paris Police Department alleging that Defendant committed the offense of Delivery of a Controlled Substance, a state jail felony, in Paris, Texas, Defendant has not yet been indicted on the charge but was arrested, incarcerated and is currently on a \$10,000 bond; (3) Defendant submitted urine specimens on December 15, 2008 and May, 2009 that tested positive for cocaine, on May 20, 2009, Defendant submitted a urine specimen that tested positive for cocaine and marijuana, and Defendant submitted urine specimens that tested positive for marijuana on May 5, 2009 and May 11, 2009.

At the August 12, 2009 hearing, Defendant entered a plea of true to the allegations set forth in paragraph (3) above regarding her use of controlled substances. Defendant did not plead true to the facts pertaining to the alleged violations of federal, state or local law, and the state delivery and assault charges against Defendant apparently remain pending. Defendant waived her right to object to this Court's report and recommendations as well as her right to allocute before the district judge.

The Court finds Defendant violated the terms of her supervised release. Further, after hearing argument from counsel as to the proposed sentence, the Court recommends that Defendant's supervised release be revoked based on her use of controlled substances.

RECOMMENDATION

The Court recommends that the District Court revoke the Defendant's supervised release.

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-two (22) months, with thirty-eight (38) months of supervised release to follow.

SIGNED this 13th day of August, 2009.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE